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27 2-WAY COMPUTING, INC.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

2-WAY COMPUTING, INC., a Nevada
corporation,

Plaintiff,

v.

NEXTEL FINANCE COMPANY, a
Delaware corporation; SPRINT UNITED
MANAGEMENT COMPANY, a Kansas
corporation; SPRINT SOLUTIONS, INC., a
Delaware corporation, NEXTEL OF
CALIFORNIA, INC., a Delaware
corporation, NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited
liability company, and NEXTEL
COMMUNICATIONS, INC., a Delaware
corporation, Defendants.

Case No.: 2:11-cv-00012-JCM-(PAL)

**2-WAY COMPUTING, INC.'S
UNOPPOSED MOTION FOR LEAVE TO
FILE UNDER SEAL**

Pursuant to Local Rule 10-5 and Paragraph 9 of the Stipulated Protective Order (Docket No. 39), Plaintiff 2-Way Computing, Inc. ("2-Way") hereby respectfully moves for leave to file portions of the following Motions in Limine, filed contemporaneously herewith, as well as certain exhibits in support of such Motions, under seal:

- (1) 2-Way Computing, Inc.'s Motion In Limine To Preclude Argument Or Evidence Regarding How Plaintiff's Infringement Analysis Would Affect Defendants' Invalidity Analysis
- (2) 2-Way Computing, Inc.'s Motion In Limine To Exclude Defendants' Alleged Prior Art Documents
- (3) 2-Way Computing, Inc.'s Motion In Limine To Preclude Defendants From Arguing Claim Constructions To The Jury
- (4) 2-Way Computing, Inc.'s Motion To Strike Portions Of The Opinions Of Defendants' Damages Expert Catharine Lawton
- (5) 2-Way Computing, Inc.'s Motion Exclude Defendants' Expert Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives

This Motion for Leave is based on the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument the Court may entertain. Additionally, counsel for 2-Way has conferred with counsel for Sprint Solutions, Inc., Nextel Finance Company, Sprint United Management Company, Nextel of California, Inc., Nextel Boost of California, LLC, and Nextel Communications, Inc. (collectively, "Sprint"), who indicated that they do not oppose this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On May 20, 2011, the Court entered the parties' Stipulated Protective Order. (*See* Docket No. 39.) On May 24, 2012, the Court entered a Stipulation for Amendment to Stipulated Protective Order. (*See* Docket No. 99.) The Stipulated Protective Order allows for the production of documents and information that contain business or technical information of a competitive significance. (*See* Docket No. 39 at ¶ 6.) The Stipulated Protective Order also protects non-parties that provide confidential documents and/or information in the case.

1 (Id. at ¶ 15.) Under the Stipulated Protective Order, the parties, as well as nonparties such as
2 Motorola Mobility, Motorola Solutions, and Qualcomm, produced documents, provided
3 information during discovery, and permitted the parties to produce information and
4 documents subject to confidentiality restrictions. A number of documents and information
5 produced were designated as “Confidential” in accordance with the provisions in the
6 Stipulated Protective Order as the documents or information involved proprietary technical
7 information with respect to the iDEN technology at issue and proprietary financial
8 information with respect to sales of the accused products.

9 2-Way is now filing the five Motions in Limine listed above. The Motions incorporate
10 materials that either the parties, or non-parties, have deemed “Confidential” under the
11 Stipulated Protective Order. This includes portions of the briefs and certain exhibits to the
12 declarations filed in support of 2-Way’s Motions. In accordance with paragraph 9 of the
13 Stipulated Protective Order, 2-Way hereby files the instant motion.

14 **II. LEGAL ARGUMENT AND ANALYSIS**

15 The documents filed under seal should remain sealed because they contain
16 confidential information and trade secrets regarding the technology at issue, competitive
17 information, and financial information that should not be publicly available. The Ninth
18 Circuit has held that there is a strong presumption of public access to judicial records. *See*
19 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State*
20 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file
21 documents under seal bears the burden of overcoming that presumption. *Pintos v. Pac.*
22 *Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (*quoting Kamakana*, 447 F.3d at 1178).
23 Parties “who seek to maintain the secrecy of documents attached to dispositive motions must
24 meet the high threshold of showing that ‘compelling reasons’ support secrecy.” *Kamakana*,
25 447 F.3d at 1180. Those compelling reasons must outweigh the competing interests of the
26 public in having access to the judicial records and understanding the judicial process. *Id.* At
27 1178-79. The Ninth Circuit has indicated that “compelling reasons” sufficient to outweigh the
28 public’s interest in disclosure and justify sealing court records exist when it is appropriate to
protect sensitive material, such as a party’s proprietary business operations and trade secrets.

1 See generally *id.* at 1179. The information 2-Way seeks to maintain under seal meets the
2 “compelling reasons” test.

3 The information 2-Way seeks to maintain under seal relates to (1) the development
4 and operation of the iDEN system and (2) competitive financial information about Sprint’s
5 sale of the accused iDEN products. The information has been designated as “Confidential”
6 under the Stipulated Protective Order because the producing party considers the information
7 to be proprietary and subject to protection. Another district court considered the issue in an
8 unrelated theft of trade secrets case involving documents concerning iDEN technology, and
9 made specific findings of fact that the iDEN technology is proprietary and not readily
10 available to the public. See *U.S. v. Hanjuan Jin*, 833 F. Supp. 2d 977, 982, 993 (N.D. Ill.
11 2012).

12 The following materials relate to the development and operation of the proprietary
13 iDEN technology, including how devices that use such technology operate, and thus should
14 be maintained under seal:

- 15 • Exhibit 1 to 2-Way Computing, Inc.’s Motion In Limine To Preclude Argument Or
16 Evidence Regarding How Plaintiff’s Infringement Analysis Would Affect
17 Defendants’ Invalidity Analysis
- 18 • Exhibit 22 to 2-Way Computing, Inc.’s Motion In Limine To Exclude Defendants’
19 Alleged Prior Art Documents
- 20 • Exhibit 2 to 2-Way Computing, Inc.’s Motion In Limine To Preclude Defendants
21 From Arguing Claim Constructions To The Jury

22 The following materials relate to confidential financial information regarding Sprint’s
23 sales of the accused products, and thus should be maintained under seal:

- 24 • Plaintiff 2-Way Computing, Inc.’s Motion To Strike Portions Of The Opinions Of
25 Defendants’ Damages Expert Catharine Lawton
- 26 • Exhibit C to Plaintiff 2-Way Computing, Inc.’s Motion To Strike Portions Of The
27 Opinions Of Defendants’ Damages Expert Catharine Lawton
- 28 • Exhibit D to Plaintiff 2-Way Computing, Inc.’s Motion To Strike Portions Of The
Opinions Of Defendants’ Damages Expert Catharine Lawton

- Exhibit A to Plaintiff 2-Way Computing, Inc.’s Motion Exclude Defendants’ Expert Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives
- Exhibit B to Plaintiff 2-Way Computing, Inc.’s Motion Exclude Defendants’ Expert Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives
- Exhibit E to Plaintiff 2-Way Computing, Inc.’s Motion Exclude Defendants’ Expert Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives

Due to the confidential, proprietary, and private nature of these documents and information, public disclosure could result in improper use and could put not only Defendant Sprint, but also non-parties, at a competitive disadvantage in the marketplace.

Considering the information at issue, there is comparatively little value to the general public in terms of enhancing its “understanding of the judicial process.” *See Kamakana*, 447 F.3d at 1179. Therefore, there is no harm to the public if this proprietary information is not publically accessible. Accordingly, this Court should enter an order to seal the documents and information and not place it on the Court’s docket.

III. CONCLUSION

The exhibits and redacted portions of 2-Way’s Motions in Limine contain confidential information and trade secrets regarding the technology used by Sprint for Push-to-Talk, as well as confidential financial information regarding Sprint’s sales of the accused products. Thus, 2-Way respectfully requests that the Court enter an Order granting this unopposed motion for these materials to remain sealed.

1 Dated: July 24, 2015

Respectfully submitted,

2
3 By: /s/ Reza Mirzaie

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2015, I presented the within **2-WAY COMPUTING, INC.'S UNOPPOSED MOTION FOR LEAVE TO FILE UNDER SEAL** to the Clerk of Court for filing and uploading to the ECF system which will send notification to the following:

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/s/ Reza Mirzaie
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16 2-WAY COMPUTING, INC.

17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF NEVADA

18 2-WAY COMPUTING, INC., a Nevada
19 corporation,
20 Plaintiff,
21 v.
22

23 NEXTEL FINANCE COMPANY, a
24 Delaware corporation; SPRINT UNITED
25 MANAGEMENT COMPANY, a Kansas
26 corporation; SPRINT SOLUTIONS, INC., a
27 Delaware corporation, NEXTEL OF
28 CALIFORNIA, INC., a Delaware
corporation, NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited
liability company, and NEXTEL
COMMUNICATIONS, INC., a Delaware
corporation,
Defendants.

Case No.: 2:11-cv-00012-JCM-(PAL)

**[PROPOSED] ORDER GRANTING
2-WAY COMPUTING, INC.'S
UNOPPOSED MOTION FOR LEAVE
TO FILE UNDER SEAL**

1 The Court, having reviewed Plaintiff 2-Way Computing, Inc.'s ("2-Way") Unopposed
2 Motion for Leave to File Under Seal and good cause appearing, hereby ORDERS that the
3 following documents can be filed under seal:

- 4 • Exhibit 1 to 2-Way Computing, Inc.'s Motion In Limine To Preclude Argument Or
5 Evidence Regarding How Plaintiff's Infringement Analysis Would Affect
6 Defendants' Invalidity Analysis
- 7 • Exhibit 22 to 2-Way Computing, Inc.'s Motion In Limine To Exclude Defendants'
8 Alleged Prior Art Documents
- 9 • Exhibit 2 to 2-Way Computing, Inc.'s Motion In Limine To Preclude Defendants
10 From Arguing Claim Constructions To The Jury
- 11 • Plaintiff 2-Way Computing, Inc.'s Motion To Strike Portions Of The Opinions Of
12 Defendants' Damages Expert Catharine Lawton
- 13 • Exhibit C to Plaintiff 2-Way Computing, Inc.'s Motion To Strike Portions Of The
14 Opinions Of Defendants' Damages Expert Catharine Lawton
- 15 • Exhibit D to Plaintiff 2-Way Computing, Inc.'s Motion To Strike Portions Of The
16 Opinions Of Defendants' Damages Expert Catharine Lawton
- 17 • Exhibit A to Plaintiff 2-Way Computing, Inc.'s Motion Exclude Defendants' Expert
18 Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives
- 19 • Exhibit B to Plaintiff 2-Way Computing, Inc.'s Motion Exclude Defendants' Expert
20 Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives
- 21 • Exhibit E to Plaintiff 2-Way Computing, Inc.'s Motion Exclude Defendants' Expert
22 Opinions, Argument, And Evidence Regarding Non-Infringing Alternatives

23
24
25 IT IS SO ORDERED.

26 Dated: August 19, 2015

27
28
By:


United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 2015, I presented the within
**[PROPOSED] ORDER GRANTING 2-WAY COMPUTING, INC.'S UNOPPOSED
MOTION FOR LEAVE TO FILE UNDER SEAL** to the Clerk of Court for filing and
uploading to the ECF system which will send notification to the following:

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